

111TH CONGRESS
1ST SESSION

H. R. 1029

To amend the Immigration and Nationality Act and title 18, United States Code, to combat the crime of alien smuggling and related activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2009

Mr. HILL introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act and title 18, United States Code, to combat the crime of alien smuggling and related activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alien Smuggling and
5 Terrorism Prevention Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Alien smuggling by land, air, and sea is a
2 transnational crime that—

3 (A) violates the integrity of United States
4 borders;

5 (B) compromises the sovereignty of the
6 United States;

7 (C) places our Nation at risk of terrorist
8 activity; and

9 (D) contravenes the rule of law.

10 (2) Aggressive enforcement activity against
11 alien smuggling is needed to protect the borders of
12 the United States and to ensure our Nation's secu-
13 rity. The border security and antismuggling efforts
14 of the men and women on the Nation's front line of
15 defense are commendable. Special recognition should
16 be given to the Border Patrol, the Coast Guard,
17 United States Customs and Border Protection,
18 United States Immigration and Customs Enforce-
19 ment, and the Federal Bureau of Investigation.

20 (3) The law enforcement community must be
21 given the statutory tools necessary to address this
22 security threat. The United States Attorneys Offices
23 and the Domestic Security Section of the Criminal
24 Division cannot prosecute these cases successfully
25 without effective alien smuggling statutes.

1 (4) Alien smuggling has a destabilizing effect
2 on border communities. State and local law enforce-
3 ment, medical personnel, social service providers,
4 and the faith community play important roles in
5 combating smuggling and responding to its effects.

6 (5) Existing penalties for alien smuggling are
7 insufficient to provide appropriate punishment for
8 alien smugglers.

9 (6) Existing alien smuggling laws often fail to
10 reach the conduct of alien smugglers, transporters,
11 recruiters, guides, and boat captains.

12 (7) Existing laws concerning failure to heave to
13 are insufficient to appropriately punish boat opera-
14 tors and crew who engage in the reckless transpor-
15 tation of aliens on the high seas and seek to evade
16 capture.

17 (8) Much of the conduct in alien smuggling
18 rings occurs outside of the United States.
19 Extraterritorial jurisdiction is needed to ensure that
20 smuggling rings can be brought to justice for re-
21 cruiting, sending, and facilitating the movement of
22 those who seek to enter the United States without
23 lawful authority.

1 (9) Alien smuggling can include unsafe or reck-
2 lessly dangerous conditions that expose individuals
3 to particularly high risk of injury or death.

4 **SEC. 3. CHECKS AGAINST TERRORIST WATCH LIST.**

5 The Secretary of Homeland Security shall, to the ex-
6 tent practicable, check, against all available terrorist
7 watch lists, alien smugglers and smuggled individuals who
8 are interdicted at the land, air, and sea borders of the
9 United States.

10 **SEC. 4. STRENGTHENING PROSECUTION AND PUNISHMENT**
11 **OF ALIEN SMUGGLERS.**

12 Section 274(a) of the Immigration and Nationality
13 Act (8 U.S.C. 1324(a)) is amended—

14 (1) by amending the subsection heading to read
15 as follows: “BRINGING IN, HARBORING, AND SMUG-
16 GLING OF UNLAWFUL AND TERRORIST ALIENS.—”;

17 (2) by amending paragraph (1) to read as fol-
18 lows:

19 “(1)(A) A person shall be subject to the pen-
20 alties described in subparagraph (D) if the person,
21 knowing or in reckless disregard of the fact that an
22 individual is an alien who lacks lawful authority to
23 come to, enter, or reside in the United States, know-
24 ingly—

1 “(i) brings that individual to the United
2 States, regardless of any future official action
3 which may be taken with respect to that indi-
4 vidual;

5 “(ii) recruits, encourages, or induces that
6 individual to come to, enter, or reside in the
7 United States;

8 “(iii) transports or moves that individual
9 in the United States, in furtherance of that in-
10 dividual’s unlawful presence; or

11 “(iv) harbors, conceals, or shields from de-
12 tection that individual in any place in the
13 United States, including any building or means
14 of transportation.

15 “(B) A person shall be subject to the penalties
16 described in subparagraph (D) if the person, know-
17 ing that an individual is an alien, brings that indi-
18 vidual to the United States at a place other than a
19 designated port of entry or a place designated by the
20 Secretary of Homeland Security, regardless of
21 whether such alien has received prior official author-
22 ization to come to, enter, or reside in the United
23 States and regardless of any future official action
24 which may be taken with respect to that individual.

1 “(C) A person who attempts or conspires to
2 commit any offense described subparagraph (A) or
3 (B) shall be subject to the same penalties as a per-
4 son who completes the offense.

5 “(D) A person who commits any offense de-
6 scribed in this paragraph shall, for each individual
7 in respect to whom such offense occurs—

8 “(i) be fined under title 18, United States
9 Code, imprisoned not more than 5 years, or
10 both if the offense is not described in any of
11 clauses (ii) through (vii);

12 “(ii) be fined under such title, imprisoned
13 not more than 1 year, or both, if the offense in-
14 volved the transit of the defendant’s spouse,
15 child, sibling, parent, grandparent, or niece or
16 nephew and is not described in any of clauses
17 (iii) through (vi);

18 “(iii) be fined under such title, imprisoned
19 not more than 10 years, or both if the violation
20 is described in clauses (ii), (iii), or (iv) of sub-
21 paragraph (A) or subparagraph (B) and was
22 committed for the purpose of profit, commercial
23 advantage, or private financial gain;

24 “(iv) be fined under such title and impris-
25 oned, in the case of a first or second violation,

1 for a term of not fewer than 3 years and not
2 more than 10 years, and for any subsequent
3 violation, for a term of not fewer than 5 years
4 and not more than 15 years, if the offense—

5 “(I) is described in subparagraph
6 (A)(i) and was committed for the purpose
7 of profit, commercial advantage, or private
8 financial gain; or

9 “(II) was committed with the intent
10 or reason to believe that the individual un-
11 lawfully brought into the United States
12 will commit an offense against the United
13 States or any State that is punishable by
14 imprisonment for more than 1 year;

15 “(v) be fined under such title, imprisoned
16 not more than 20 years, or both if the of-
17 fense—

18 “(I) results in serious bodily injury
19 (as defined in section 1365 of title 18,
20 United States Code); or

21 “(II) places in jeopardy the life of any
22 person;

23 “(vi) be fined under such title, imprisoned
24 not more than 30 years, or both if the offense
25 involved an individual who the person knew was

1 engaged in or intended to engage in terrorist
2 activity (as defined in section 212(a)(3)(B));

3 “(vii) be fined under such title, imprisoned
4 for any term of years or for life, or both if the
5 offense involves kidnaping, an attempt to kid-
6 nap, conduct required for aggravated sexual
7 abuse (as defined in section 2241 without re-
8 gard to where it takes place), an attempt to
9 commit such abuse, or an attempt to kill; and

10 “(viii) fined under such title, punished by
11 death or imprisoned for any term of years or
12 for life, or both if the offense results in the
13 death of any person.”; and

14 (3) by amending paragraph (2) to read as fol-
15 lows:

16 “(2)(A) There is extraterritorial jurisdiction
17 over the offenses described in paragraph (1).

18 “(B) In a prosecution for a violation of, or an
19 attempt or conspiracy to violate subparagraph
20 (A)(i), (A)(ii), or (B) of paragraph (1), that occurs
21 on the high seas, no defense based on necessity can
22 be raised unless the defendant—

23 “(i) reported to the Coast Guard, as soon
24 as practicable—

1 “(I) the circumstances of the neces-
2 sity; and

3 “(II) if a rescue is claimed, the name,
4 description, registry number, and location
5 of the vessel engaging in the rescue; and

6 “(ii) did not bring, attempt to bring, or in
7 any manner intentionally facilitate the entry of
8 any alien into the land territory of the United
9 States without lawful authority, unless exigent
10 circumstances existed that placed the life of
11 that alien in danger, in which case the report-
12 ing requirement under clause (i) is satisfied by
13 notifying the Coast Guard as soon as prac-
14 ticable after delivering the alien to emergency
15 medical or law enforcement personnel ashore.

16 “(C) It is not a violation of, or an attempt or
17 conspiracy to violate, clause (iii) or (iv) of paragraph
18 (1)(A), or paragraph (1)(A)(ii) (except if a person
19 recruits, encourages, or induces an alien to come to
20 or enter the United States), for a religious denomi-
21 nation having a bona fide nonprofit, religious organi-
22 zation in the United States, or the agents or officer
23 of such denomination or organization, to encourage,
24 invite, call, allow, or enable an alien who is present
25 in the United States to perform the vocation of a

1 minister or missionary for the denomination or orga-
2 nization in the United States as a volunteer who is
3 not compensated as an employee, notwithstanding
4 the provision of room, board, travel, medical assist-
5 ance, and other basic living expenses, provided the
6 minister or missionary has been a member of the de-
7 nomination for at least 1 year.

8 “(D) In this paragraph and in paragraph (1)—

9 “(i) the term ‘lawful authority’—

10 “(I) means permission, authorization,
11 or waiver that is expressly provided for in
12 the immigration laws of the United States
13 or the regulations prescribed under those
14 laws; and

15 “(II) does not include any such au-
16 thority secured by fraud or otherwise ob-
17 tained in violation of law or authority that
18 has been sought but not approved.

19 “(ii) the term ‘United States’ means the
20 several States, the District of Columbia, the
21 Commonwealth of Puerto Rico, Guam, Amer-
22 ican Samoa, the United States Virgin Islands,
23 the Commonwealth of the Northern Mariana Is-
24 lands, and every other territory and possession
25 of the United States.”.

1 **SEC. 5. MARITIME LAW ENFORCEMENT.**

2 (a) PENALTIES.—Section 2237(b) of title 18, United
3 States Code, is amended to read as follows:

4 “(b)(1) Except as provided under paragraph (2), any
5 person who intentionally violates this section shall, be
6 fined under this title, imprisoned for not more than 5
7 years, or both.

8 “(2)(A) A person described in paragraph (1) shall be
9 fined under this title, imprisoned for not more than 10
10 years, or both if the violation is committed in the course
11 of a violation of—

12 “(i) section 274 of the Immigration and Na-
13 tionality Act (alien smuggling);

14 “(ii) chapter 77 (peonage, slavery, and traf-
15 ficking in persons), section 111 (shipping), 111A
16 (interference with vessels), 113 (stolen property), or
17 117 (transportation for illegal sexual activity) of this
18 title;

19 “(iii) chapter 705 (maritime drug law enforce-
20 ment) of title 46; or

21 “(iv) title II of the Act of June 15, 1917 (40
22 Stat. 220).

23 “(B) A person described in paragraph (1) shall be
24 fined under this title, imprisoned not more than 15 years,
25 or both if the violation results in serious bodily injury (as

1 defined in section 1365) or transportation under inhu-
2 mane conditions.

3 “(C) A person described in paragraph (1) shall be
4 fined under this title, imprisoned for any term of years
5 or for life, or both if the violation—

6 “(i) results in death; or

7 “(ii) involves kidnaping, an attempt to kidnap,
8 the conduct required for aggravated sexual abuse (as
9 defined in section 2241 without regard to where it
10 takes place), an attempt to commit such abuse, or
11 an attempt to kill.”.

12 (b) LIMITATION ON NECESSITY DEFENSE.—Section
13 2237(c) of title 18, United States Code, is amended—

14 (1) by inserting “(1)” after “(c)”;

15 (2) by adding at the end the following:

16 “(2) In a prosecution for a violation of this section,
17 no defense based on necessity can be raised unless the de-
18 fendant—

19 “(A) as soon as practicable upon reaching
20 shore, delivered the person with respect to which the
21 necessity arose to emergency medical or law enforce-
22 ment personnel;

23 “(B) as soon as practicable, reported to the
24 Coast Guard the circumstances of the necessity re-
25 sulting giving rise to the defense; and

1 “(C) did not bring, attempt to bring, or in in-
2 tentionally facilitate the entry of any alien (as de-
3 fined in section 101(a)(3) of the Immigration and
4 Nationality Act (8 U.S.C. 1101(a)(3))) into the land
5 territory of the United States without lawful author-
6 ity, unless exigent circumstances existed that placed
7 the life of that alien in danger, in which case the re-
8 porting requirement under subparagraph (B) is sat-
9 isfied by notifying the Coast Guard as soon as prac-
10 ticable after delivering that person to emergency
11 medical or law enforcement personnel ashore.”.

12 (c) DEFINITION.—Section 2237(e) of title 18, United
13 States Code, is amended—

14 (1) by redesignating paragraphs (3) and (4) as
15 paragraphs (4) and (5), respectively; and

16 (2) by inserting after paragraph (2) the fol-
17 lowing:

18 “(3) the term ‘transportation under inhumane
19 conditions’ means—

20 “(A) transportation of persons in an en-
21 gine compartment, storage compartment, or
22 other confined space;

23 “(B) transportation at an excessive speed;

1 “(C) transportation of a number of per-
2 sons in excess of the rated capacity of the
3 means of transportation; or

4 “(D) intentionally grounding a vessel in
5 which persons are being transported.”.

6 **SEC. 6. AMENDMENT TO THE SENTENCING GUIDELINES.**

7 (a) IN GENERAL.—Pursuant to its authority under
8 section 994 of title 28, United States Code, and in accord-
9 ance with this section, the United States Sentencing Com-
10 mission shall review and, if appropriate, amend the sen-
11 tencing guidelines and policy statements applicable to per-
12 sons convicted of alien smuggling offenses and criminal
13 failure to heave to or obstruction of boarding.

14 (b) CONSIDERATIONS.—In carrying out this section,
15 the Sentencing Commission, shall—

16 (1) consider providing sentencing enhancements
17 or stiffening existing enhancements for those con-
18 victed of offenses described in paragraph (1) that—

19 (A) involve a pattern of continued and fla-
20 grant violations;

21 (B) are part of an ongoing commercial or-
22 ganization or enterprise;

23 (C) involve aliens who were transported in
24 groups of 10 or more;

1 (D) involve the transportation or abandon-
2 ment of aliens in a manner that endangered
3 their lives; or

4 (E) involve the facilitation of terrorist ac-
5 tivity; and

6 (2) consider cross-references to the guidelines
7 for criminal sexual abuse and attempted murder.

8 (c) EXPEDITED PROCEDURES.—The Commission
9 may promulgate the guidelines or amendments under this
10 section in accordance with the procedures set forth in sec-
11 tion 21(a) of the Sentencing Act of 1987, as though the
12 authority under that Act had not expired.

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